

PROHIBITION OF UNITED STATES FUNDS TO CERTAIN
CHINESE OFFICIALS

OCTOBER 6, 1997.—Ordered to be printed

Mr. GILMAN, from the Committee on International Relations,
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 967]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 967) to prohibit the use of United States funds to provide for the participation of certain Chinese officials in international conferences, programs, and activities and to provide that certain Chinese officials shall be ineligible to receive visas and excluded from admission to the United States, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 1, strike line 3 and all that follows through line 15 on page 6.

Page 6, line 16, strike “**SEC. 2.**” and insert “**SECTION 1.**” line 3 and all that follows through line 15 on page 6.

Page 7, line 9, strike “**SEC. 3.**” and insert “**SEC. 2.**”.

Page 8, line 14, strike “is directly involved in” and insert “carried out or directed the carrying out of”.

Page 8, line 15, strike “or who was responsible for the supervision of persons directly involved in such policies or practices”.

Page 10, line 7, strike “**SEC. 4.**” and insert “**SEC. 3.**”.

Page 10, line 9, strike lines 10 through 14, and insert the following:

(a) REQUIREMENT.—Notwithstanding any other provision of law, any national of the People’s Republic of China described in section 2(a)(2) (except the head of state, the head of government, and cabinet level ministers) shall be ineligible to receive visas and shall be excluded from admission into the United States.

(b) WAIVER.—The President may waive the requirement in subsection (a) with respect to an individual described in such subsection if the President—

(1) determines that it is vital to the national interest to do so; and

(2) provides written notification to the appropriate congressional committees (as defined in section 2(c)) containing a justification for the waiver.

Page 10, line 15, strike “**SEC. 5.**” and insert “**SEC. 4.**”.

Page 10, line 16, strike “3 and 4” and insert “2 and 3”.

BACKGROUND AND PURPOSE

H.R. 967 prohibits the use of United States funds to provide for the participation of certain Chinese officials in international conferences, programs, and activities and to provide that certain Chinese officials shall be ineligible to receive visas and excluded from admission to the United States.

Despite public assurances by the Government of the People’s Republic of China (PRC) that it would abide by the principles of the Universal Declaration of Human Rights, and despite the United Nations Charter requirement that all members promote respect for and observance of basic human rights, including freedom of religion, the Chinese Government continues to place severe restrictions on religious expression and practice. It has been reported that at an internal Central Communist Party meeting in 1994, President Jiang Zemin asserted that religion is one of the biggest threats to Communist Party rule in China and Tibet. On January 31, 1994, Premier Li Peng signed decrees number 144 and 145 which restrict worship, religious education, distribution of Bibles and other religious literature, and contact with foreign coreligionists.

The Chinese Government has created official religious organizations that control all religious worship, activity, and association in China and Tibet and supplant the independent authority of the Roman Catholic Church, independent Protestant churches, and independent Buddhist, Taoist, and Islamic associations. In July 1995, Ye Xiaowen, a rigid communist, hostile to religion, was appointed to head the Bureau of Religious Affairs, a Chinese Government agency controlled by the United Front Work Department of the Chinese Communist Party. The Bureau of Religious Affairs has administrative control over all religious worship and activity in China and Tibet through a system of granting or denying rights through an official registration system. Those who fail to or are not allowed to register are subject to punitive measures.

In the past year, the Chinese Government has expressed great concern over the spread of Christianity and particularly over the rapid growth of Christian religious institutions other than those controlled by the Chinese Government, including the Roman

Catholic Church and the evangelical Christian “house churches”. Soon after the establishment of the People’s Republic of China in 1949, the Chinese Government imprisoned Christians who refused to relinquish their faith to become servants of communism, charging them as “counter-revolutionaries” and sentencing them to 20 years or more in “reeducation through labor” camps.

Hundreds of Chinese Protestants and Catholics are among those now imprisoned, detained, or continuously harassed because of their religious beliefs or activities. The prisons and labor camps which hold these religious prisoners are run by the Ministry of Public Security and the Ministry of Justice of the Chinese Government. Although some negotiations have taken place, the Chinese Government refuses to permit the appointment by the Vatican of Catholic bishops and the ordination of priests not approved by the Government and insists on appointing its own “Catholic bishops.” Similar problems are facing the Tibetan people.

It has always been the right and the role of the Dalai Lama to recognize the successor to the Panchen Lama. On May 14, 1995, His Holiness the Dalai Lama announced recognition of a six-year-old boy, Gedhun Choekyi Nyima, as the Eleventh Panchen Lama, according to Tibetan tradition. Chinese authorities announced publicly in June 1996 that they are holding Gedhun Choekyi Nyima and his family. Chadrel Rinpoche, abbot of Tashilhunpo Monastery and head of the original search committee for the Eleventh Panchen Lama, and his assistant, Champa Chung, were seized and detained by Chinese authorities in May of 1995. Chinese Government authorities subsequently detained other Tibetan Buddhists in connection with the selection of the Eleventh Panchen Lama, including Gyatrol Rinpoche, Shepa Kelsang, Lhakpa Tsering, and Ringkar Ngawang.

The Chinese Government convened a conference in Beijing where Tibetan monks were coerced to select a rival candidate to the child recognized by the Dalai Lama as the Eleventh Panchen Lama. On November 29, 1995, officials of the Chinese Government orchestrated an elaborate ceremony designating a six-year-old boy selected by the Chinese Government as the Eleventh Panchen Lama. On December 8, 1995, a Government-sponsored ceremony was held in Shigatze, Tibet, where the boy selected by the Government was enthroned as the Eleventh Panchen Lama. The Chinese Government is infringing on a purely Tibetan religious matter—in blatant violation of the fundamental human rights of the Tibetan people.

Currently, there is no system in place that ensures that United States government travel funds or visas are not provided to Chinese government officials who repress religion. It is currently possible for a Chinese official who tortures a Christian or imprisons a Muslim for illegally distributing religious material to receive a United States visa or a United States Information Agency travel grant.

H.R. 967 would ensure that this not be the case for most Chinese government officials who engage in such offensive actions. The Committee is not convinced that any benefits (to the United States government or the people being repressed by these officials) arising out of short-term visits by such officials to the United States out-

weighs the important symbolism of generally denying them access to this country.

During the consideration of this bill an amendment was adopted providing that the President could, in certain circumstances, waive the restrictions on issuance of visas and entry into the United States of certain PRC officials who would otherwise be barred. The bill, after the amendment was adopted, was criticized on the grounds that it allowed Congress to take a popular position on a sensitive issue by passing legislation and then giving the President the responsibility for providing or not providing a waiver.

The Committee observes that there is ample precedent for the provision of such waivers so as to afford the Administration needed flexibility, and that the Administration frequently requests such waiver authority. During the 103d Congress, for example, when the current Minority was in the majority, the Committee approved several provisions permitting the President to waive certain provisions. In H.R. 5030 as reported by the Committee, the President was provided a waiver of certain restrictions related to narcotics-related economic assistance. In

H.R. 2333 (103d Congress), as reported, section 111 provided waivers for the end strengths of the foreign service, and section 116 provided for a waiver of anti-discrimination provisions. Finally, the Committee notes that during consideration of H.R. 1486 earlier this Congress, Minority members of the Committee, led by the Ranking Minority Member (and the Chairman) voted 13–3 in favor of a Hyde amendment providing the President the right to waive a provision relating to assistance to Russia.

COMMITTEE ACTION

The Subcommittee on International Operations and Human Rights during the 104th and 105th Congresses held the following hearings or markups related to religious persecution in the PRC:

1. February 2, 15, 1995—Country Reports on Human Rights Practices for 1994.
2. April 3, 1995—Chinese Prison System, “LAOGAI”.
3. February 15, 1996—Persecution of Christians Worldwide.
4. March 26, 1996—Country Reports on Human Rights Practices for 1995.
5. June 18, 1996—China MFN: Human Rights Consequences.

On March 6, 1997, Chairman Gilman introduced H.R. 967 (for himself, Mr. Hyde, Mr. Solomon, Mr. Cox, Mr. Burton, Mr. Smith of New Jersey, Mr. Rohrabacher, Mr. Payne, and Mr. Lantos). The bill was referred to the Committee on International Relations and the Committee on the Judiciary.

On September 26, 29, and 30, 1997, the Committee on International Relations met in open session and amended the bill as follows:

Agreed to a Manzullo amendment, as amended by a Smith substitute (as modified), to revise the provisions barring certain PRC nationals and to provide a Presidential waiver of those provisions if the President determines that it is vital to the national interest to do so, and so reports to the appropriate congressional committees (this language is now carried as section 3 of the bill as reported).

Agreed to a Campbell amendment to strike Section 1 of the bill as introduced (relating to findings).

Agreed to a Bereuter amendment to page 8, line 14 of the bill as introduced replacing (in paragraph (a)(2) of section 2 of the bill as reported) the phrase “is directly involved in” with the phrase “carried out or directed the carrying out.” It also deleted language on lines 15 to 17 of page 8 of the bill as introduced (section 2(a)(2) of the bill as reported) including, in the description of persons affected by aspects of the bill, persons who “were responsible for the supervision of persons directly involved in” certain described policies or practices.

On September 30, 1997, with a quorum present, the Committee ordered the bill reported with the recommendation that the bill, as amended, do pass by a record vote of 22 ayes to 18 nays.

ROLLCALL VOTES

Clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee’s votes in this regard are set out below:

Votes during full committee markup of H.R. 967—September 26, 1997

Vote #1 (12:39 p.m.)—CAMPBELL amendment to strike Section 3(a)(1).

Voting yes: Bereuter, Kim, Sanford, Houghton, Campbell, McHugh, Hamilton, Ackerman, Martinez, Payne, Hilliard, Capps, Sherman, and Luther.

Voting no: Gilman, Goodling, Hyde, Smith, Burton, Ballenger, Manzullo, Royce, Chabot, Fox, Graham, Blunt, Brady, and Rothman.

Defeated 14 ayes to 14 noes.

Vote #2 (12:45 p.m.)—CAMPBELL amendment to strike Section 1

Voting yes: Bereuter, Manzullo, Kim, Houghton, Campbell, Fox, McHugh, Hamilton, Ackerman, Martinez, Payne, Hilliard, Capps, and Luther.

Voting no: Gilman, Goodling, Hyde, Smith, Ballenger, Royce, Chabot, Salmon, Graham, Brady, and Rothman.

Passed 14 ayes to 11 noes.

Votes during full committee markup of H.R. 967—September 29, 1997

Vote #1 (5:56 p.m.)—Smith motion to favorably report H.R. 967 to the House, as amended.

Voting yes: Goodling, Smith, Burton, Ros-Lehtinen, Ballenger, Royce, Kim, Chabot, Blunt, Brady, Payne, Menendez, Rothman, and Luther.

Voting no: Gilman, Bereuter, Manzullo, Houghton, Campbell, McHugh, Hamilton, Gejdenson, Berman, Ackerman, Martinez, Danner, Hilliard, Capps, Sherman, Clement, and Davis.

Defeated 14 ayes to 17 noes.

Votes during full committee markup of H.R. 967—September 30, 1997

Vote #1 (11:59 a.m.)—Gejdenson motion to table the Gilman motion to reconsider the vote by which the Committee failed to agree to the motion to report favorably H.R. 967, as amended.

Voting yes: Bereuter, Manzullo, Houghton, Campbell, Hamilton, Gejdenson, Ackerman, Payne, Menendez, Brown, Hastings, Danner, Hilliard, Capps, Sherman, Clement, and Davis.

Voting no: Gilman, Goodling, Hyde, Smith, Burton, Ros-Lehtinen, Ballenger, Rohrabacher, Royce, King, Kim, Chabot, Salmon, Fox, McHugh, Graham, Blunt, Brady, McKinney, and Luther.

Defeated 17 ayes to 20 noes.

Vote #2 (12:24 p.m.)—Smith motion (on reconsideration) to favorably report H.R. 967, as amended.

Voting yes: Gilman, Goodling, Hyde, Smith, Burton, Ros-Lehtinen, Ballenger, Rohrabacher, Royce, King, Kim, Chabot, Salmon, Fox, McHugh, Graham, Blunt, Brady, Payne, Menendez, McKinney, and Luther.

Voting no: Bereuter, Manzullo, Houghton, Campbell, Hamilton, Gejdenson, Ackerman, Martinez, Andrews, Brown, Hastings, Danner, Hilliard, Capps, Sherman, Wexler, Clement, and Davis.

Passed 22 ayes to 18 noes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

The Committee adopts the cost estimate of the Congressional Budget Office, set out below, as its submission of any required information on new budget authority, new spending authority, new credit authority, or an increase or decrease in the national debt required by clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

CONSTITUTIONAL AUTHORITY STATEMENT

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee cites the following specific powers granted to the Congress in the Constitution as authority for enactment of H.R. 967 as reported by the Committee: Article I, section 8, clause 3 (relating to the regulation of commerce with foreign nations and among the several states); and Article I, section 8, clause 18 (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the government of the United States).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth with respect to H.R. 967 as reported by the Committee the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 3, 1997.

Hon. BENJAMIN A. GILMAN,
Chairman, Committee on International Relations,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 967, a bill to prohibit the use of United States funds to provide for the participation of certain Chinese officials in international conferences, programs, and activities and to provide that certain Chinese officials shall be ineligible to receive visas and excluded from admission to the United States.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Joseph C. Whitehill.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 967—A bill to prohibit the use of United States funds to provide for the participation of certain Chinese officials in international conferences, programs, and activities and to provide that certain Chinese officials shall be ineligible to receive visas and excluded from admission to the United States

H.R. 967 would prohibit the Department of State, the United States Information Agency, and the U.S. Agency for International Development from funding travel expenses for certain nationals of the People's Republic of China to participate in international conferences, exchange programs, and activities. The prohibition would

apply to the head or political secretary of government-created or approved religious organizations and military or civilian government officials engaged in policies or practices that repress religious activities or the free expression of religious beliefs. In addition, the bill would prohibit the State Department from issuing visas to such military and government officials, thereby excluding them from the United States.

The bill would add new screening and reporting requirements that could slightly increase the administrative overhead costs for any exchange program with the People's Republic of China. Nevertheless, CBO estimates that enactment of H.R. 967 would have no significant impact on the federal budget. Because it would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Act of 1995 and would not affect the budgets of state, local, or tribal governments.

The estimate was prepared by Joseph C. Whitehall. The estimate was approved by Paul N. Van de Water, Assistant Director of Budget Analysis.

JURISDICTIONAL ISSUES AND OTHER MATTERS

This legislation has been referred, in addition, to the Committee on the Judiciary.

SECTION-BY-SECTION ANALYSIS

Section 1. Congressional statement of policy

States the sense of Congress that the President should make freedom of religion one of the major objectives of United States foreign policy with respect to China; that the Department of State should raise in every relevant forum the issue of individuals imprisoned or otherwise harassed by the Chinese government on religious grounds; and that the Department of State should provide specific names of individuals of concern and request a complete and timely response from the Chinese government regarding such individuals.

Section 2. Prohibition on use of funds for the participation of certain Chinese officials in conferences, exchanges, programs, and activities

Notwithstanding any other provision of law, for fiscal years after fiscal year 1997, no funds available to the Department of State, the U.S. Information Agency, or the U.S. Agency for International Development may be used to fund travel or related expenses for the participation of certain nationals of the People's Republic of China in conferences, exchanges, programs and activities. The Chinese nationals subject to this prohibition are the heads or political secretaries of specified Chinese Government-created or approved religious organizations, and any military or civilian official or employee of the Chinese government who carried out or directed the carrying out of specified repressive policies or practices with regard to religion.

The Department of State, the U.S. Information Agency, and the U.S. Agency for International Development are required to certify periodically to the appropriate committees of Congress that they did not pay, either directly or through contractors or grantees, for travel or related expenses of any Chinese national subject to the prohibition. Each such certification must be supported by the name of each Chinese government employee whose travel expenses were paid by agency funds; a description of the procedures employed to ascertain whether each such Chinese government employee did or did not participate in religious persecution; and the agency's basis for concluding that each such Chinese government employee did not participate in religious persecution.

Section 3. Certain officials of the People's Republic of China ineligible to receive visas and excluded from admission

Any military or civilian official or employee of the Chinese government who carried out or directed the carrying out of specified repressive policies or practices with regard to religion (except the head of state, the head of government, and cabinet level ministers) shall be ineligible to receive visas and shall be excluded from admission to the United States. The President may waive this prohibition if he determines that it is vital to the national interest to do so and provides written notification to the appropriate committees of Congress, including a justification for the waiver.

Section 4. Sunset provision

Sections 2 and 3 shall cease to have effect 4 years after the date of enactment.

DISSENTING VIEWS

This resolution would prohibit the use of United States funds to provide for the participation of certain Chinese officials in international conferences, programs, and exchanges. The resolution would also ban certain Chinese officials from receiving U.S. visas or being admitted into the United States.

This resolution is flawed both substantively and procedurally. While this bill was improved by a number of amendments in committee, it still contains several serious substantive problems:

First, the impact of this bill is unclear. The category of individuals who might be subject to the provisions of this legislation is unduly broad, vague, and undefined. Members are not able to say with precision which Chinese officials might be affected by this bill. Members did not have the opportunity to determine the broad reaches of the bill—for example, how this bill would affect travel by Chinese officials to the United Nations.

Second, there is significant danger that passage of this bill will encourage China to retaliate by barring visits to China by American religious figures. To assume that Beijing will not retaliate is certainly not in accord with our experience with the Chinese on other issues, such as trade.

Third, this bill would create an administrative nightmare for the Executive branch. Compiling and maintaining lists of officials covered by this bill will likely be difficult, costly, and time-consuming.

Fourth, this bill represents another example of the Congress writing unwise or unworkable laws and then giving the President a limited authority to waive the law. Such a practice undermines the role of the Legislative branch as a constructive partner in the making of U.S. foreign policy. It allows the Congress to take political credit for popular stands while placing all the burden on the President. This is hardly conducive to the establishment of a true partnership between the branches.

Fifth, this bill embraces the concept that we can solve our problems by cutting off contact and dialogue with the Chinese. But the record suggests that we are most likely to move the Chinese in the directions we wish by engagement—by maintaining and even encouraging dialogue. This bill is likely to undermine the ability of United States' religious and human rights leaders to visit China.

Procedurally, the process followed by the Committee in marking up this resolution was most unfortunate.

First, the process did not reflect the way a responsible committee should operate. Members and staff were not given adequate notice to study this resolution, even though it deals with serious issues that could have a major adverse impact on the upcoming summit meeting with the Chinese president. The usual requirement of one week's notice for a mark up was reduced to barely more than 24 hours. No unusual or emergency circumstances exist that war-

ranted waiving the customary one-week rule. No committee hearings have been held on this resolution, nor were any senior Administration officials permitted to testify on the policy implications of this resolution prior to the mark up.

Second, this resolution is badly timed. It does not enhance the ability of the President to advance United States non-proliferation goals at the upcoming United States-China summit, the first official United States-China summit in over eight years. It is counter-productive for the Committee—on the basis of hasty deliberation and inadequate consultation with the Executive branch—to condemn Chinese actions and criticize Administration policy, since this approach is unlikely to persuade the Chinese that the Congress is serious about its commitment to non-proliferation. Adoption of this resolution will make the President's job more difficult as he attempts to persuade the Chinese to halt the transfer to Iran of dangerous weapons. The Congress should be working with the President to help make the summit successful, not passing bills to put obstacles in his way, and to create the impression that the Congress is moving in one direction and the President the other in China policy.

Finally, the cumulative impact of five resolutions on China marked up and voted out of Committee as a package—plus others that are circulating and may come to the Floor simultaneously with these five—is likely to be harmful to U.S. foreign policy interests. Congress of course has every right to express its views on these important issues. Nonetheless, when this many resolutions each with a strongly anti Chinese tilt suddenly come forward simultaneously, and only weeks before a summit meeting, it is difficult to escape the conclusion that considerations other than foreign policy are also at work here. The Chinese-American relationship will not advance if it becomes a game board for the purpose of scoring points of perceived domestic political advantage.

LEE H. HAMILTON.
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AMO HOUGHTON.
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